Supreme Court, U.S.
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No. 90 - 1635

IN THE
SUPREME COURT OF THE UNITED STATES

April Term, 1991

LAL R. BHAYA,
RICHARD CARNER,
WILLIAM J. HAESSLER,
HENRY A. PARZICK, and
EARL WILLIAMS,

Petitioners,

vs.

WESTINGHOUSE ELECTRIC CORPORATION,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the district court properly exercised its discretion in determining that, pursuant to Fed. R. Evid. 403, certain evidence should not be admitted at trial because its probative value was substantially outweighed by the danger of unfair prejudice and confusion of the issues.

2. Whether the district court applied a proper standard of harmless error in determining that its erroneous evidentiary rulings at the first trial required that it grant a new trial.

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COUNTERSTATEMENT OF THE CASE

I. PROCEDURAL HISTORY

The petitioners in this case are former employees of the respondent, Westinghouse Electric Corporation ("Westinghouse"). On November 2, 1984, they sued Westinghouse under the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. § 621 *et seq.*, alleging that age was a determining factor in their layoffs from Westinghouse in December of 1982. Following a nine-day trial in November of 1985, the jury entered a verdict in favor of the plaintiffs.

Westinghouse filed timely post-trial motions under Rules 50(d) and 59 of the Federal Rules of Civil Procedure, requesting a judgment notwithstanding the verdict, or in the alternative, a new

trial. On December 31, 1986, the Honorable Joseph S. Lord, III entered an unpublished order and opinion, granting Westinghouse's motion for a judgment *n.o.v.* He did not address or decide any of the issues raised by Westinghouse's motion for a new trial.

Plaintiffs appealed the lower court's granting of judgment *n.o.v.* to the United States Court of Appeals for the Third Circuit. On November 2, 1987, the Third Circuit issued its decision and order which reversed the granting of judgment *n.o.v.* and remanded the case to the district court for consideration in the first instance of Westinghouse's motions for a new trial and to amend the judgment. *Bhaya v. Westinghouse Electric Corp.*, 832 F.2d 258 (3d Cir. 1987). This Court denied Westinghouse's petition for certiorari on January 9, 1989. *Westinghouse Electric*

Corp. v. Bhaya, et al., cert. denied, 488 U.S. 1004 (1989).

On remand, the district court granted Westinghouse's motion for a new trial in an opinion and order dated March 22, 1989 (reported as *Bhaya v. Westinghouse Electric Corp.*, 709 F. Supp. 600 (E.D. Pa. 1989)). The district court based its decision to order a new trial on its conclusion that it had committed prejudicial error at the first trial with respect to at least two of its evidentiary rulings. The first of these erroneous rulings had allowed Henry Parzick, one of the plaintiffs, to testify regarding a conversation he allegedly had with his supervisor, Thomas Kinlin. On remand, the district court concluded that whatever relevance this testimony may have had was far outweighed by its prejudicial effect and that it should have been

excluded under Fed. R. Evid. 403, or, at a minimum, accompanied by a cautionary instruction to the jury. The second erroneous ruling had prevented Westinghouse from adducing evidence at the first trial concerning the subsequent layoffs of younger employees who allegedly assumed the job duties of the plaintiffs. On remand, the district court concluded that such evidence was relevant, at least on the issue of damages.

On November 14, 1989, after a second trial that lasted six days, the jury rendered a verdict for Westinghouse and against all plaintiffs. Judgment was entered thereon November 15, 1989. Plaintiffs again appealed to the Third Circuit, arguing that (1) the district court had erred in granting a new trial; (2) the district court had improperly

excluded evidence sought to be introduced by plaintiffs at the second trial; and (3) the district court had erred in refusing to repeat for a fourth time its instruction to the jury concerning the appropriate role of circumstantial evidence. On December 28, 1990, the Third Circuit issued its decision affirming the judgment of the district court in all respects. *Bhaya v. Westinghouse Electric Corp.*, 922 F.2d 184 (3d Cir. 1991). Plaintiffs' request for rehearing was denied by the Third Circuit on January 24, 1991.

II. THE FACTS

The petitioners in this case were formerly employed as negotiation engineers in the Combustion Turbine Systems Division ("CTSD") at the Westinghouse facility in

Concordville, Pennsylvania. In November of 1982, Westinghouse officials notified them that the company was eliminating the position of negotiation engineer as part of an effort to cut costs in CTSD by reducing the work force. The declining business of the division prompted these actions. Under the collective bargaining agreement that governed their employment at Westinghouse, petitioners were not eligible to "bump" other employees in other job progressions; consequently, they were laid off on December 17, 1982.

In support of their claim that age was a determining factor in the decision to eliminate their job position, each of the plaintiffs testified at the first trial that, at the time of their layoffs, they held the position of negotiation engineer and were over the age of 40. Each of the

plaintiffs also testified that they believed they were capable of performing the work done by the availability assurance engineers, a different job position than that held by the plaintiffs and one that was not eliminated by Westinghouse. While Mr. Parzick, Mr. Bhaya, and Mr. Carner testified that they believed the work they performed as negotiation engineers was transferred after their layoff to younger availability assurance engineers, Mr. Haessler testified he had no idea whether any of the availability assurance engineers took over his work after his layoff, and Mr. Williams testified his duties were assumed by two sales managers, jobs that Mr. Williams was not claiming he should have been given. The plaintiffs also presented hopelessly contradictory testimony at the first trial concerning the

similarities between the jobs of negotiation engineers and availability assurance engineers.

Plaintiffs also presented at the first trial the testimony of an "expert," Dr. Richard Andrulis, who described himself as an "industrial management consultant." Dr. Andrulis conceded that of the approximately 105 individuals laid off at CTSD during the relevant time period, 50 were over the age of 40 while 55 were under the age of 40. Dr. Andrulis agreed that if you were younger than 40 years of age your chances of being terminated were much higher than if you were older than 40, regardless of whether you were a member of the negotiation engineer job progression or the availability assurance job progression. He also admitted that as to the negotiation, availability assurance and general engineer

job progressions, whether considered individually or in total, one's chances of being laid off were greater if one was younger than if one was older. Nonetheless, he concluded that age was a determining factor in the layoff of plaintiffs.

Westinghouse presented at the first trial extensive evidence establishing that the decision to eliminate the position held by plaintiffs, that of negotiation engineer, was made for legitimate, non-discriminatory reasons. By the summer of 1982, the CTSD was in serious economic trouble. During 1982, the division had not received any new orders for turbines; indeed, new sales of turbines did not occur again until 1985. In June and July of 1982, management officials at the Concordville facility began making

decisions about how to reduce costs to cope with the economic crisis created by the drastic reduction of business in the division.

The first phase of the plan was a general reduction in force involving every department in the division. In the summer of 1982, employees in all areas of CTSD were laid off, including those in the job progression of negotiation engineer. In June, July and August of 1982, the five negotiation engineers with the least seniority (all of whom were younger than most of the petitioners) were laid off. During the summer of 1982, availability assurance engineers with the least seniority were also laid off.

Because the business of the division continued to decline, CTSD management decided to make further reductions in the

work force. Management ultimately concluded that the operation could function without the negotiation engineers. Once the determination was made to eliminate the position of negotiation engineer, the individuals holding that position were put up for "disposition", and their rights to other jobs at Westinghouse were determined by the terms of the collective bargaining agreement. It is undisputed that, given the work history of the five plaintiffs, they were not entitled to "bump" any other employees when their jobs were eliminated.

Bernard Siskin, who has a Ph.D. in Statistics, testified at the first trial as an expert statistician and labor economist on behalf of Westinghouse. Dr. Siskin conducted a statistical study of exempt employees at the Concordville facility who were salaried and were covered by the same

collective bargaining agreement as were the plaintiffs. After reviewing the data on this group of employees, Dr. Siskin concluded that during the period from mid-1982 through mid-1985, the layoff decisions of the company actually favored older workers.

Dr. Siskin also criticized the methodology and conclusions of plaintiffs' expert witness, Dr. Andrulis. He noted that a basic fallacy in Andrulis' analysis was his comparison of the treatment of older negotiation engineers with older availability assurance engineers and younger availability assurance engineers with younger negotiation engineers. Such a method of comparison cannot by its very nature determine whether age was a factor. It is for that reason that the only way that Westinghouse would be able to prove,

under the Andrulis analysis, that it hadn't committed age discrimination was to lay off two *older* availability assurance engineers.

III. THE RULINGS AT ISSUE

Following the reversal by the Third Circuit of the district court's grant of judgment *n.o.v.*, the district court on remand considered in the first instance Westinghouse's motion for a new trial. In granting a new trial, the district court identified *two* evidentiary errors that had prejudiced the substantial rights of Westinghouse. Petitioners predicate their arguments for *certiorari* on only one of those determinations of error and ignore the effect of the other determination of prejudicial error altogether.[1]

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[1] The district court held that its error in precluding Westinghouse from

(continued . . .)

The determination of trial error that is the focus of the instant petition arises out of Mr. Parzick's testimony at the first trial about a conversation he allegedly had with Thomas Kinlin, the last person serving as his supervisor at Westinghouse ("the Parzick testimony"). Mr. Parzick initially said Mr. Kinlin stated that he had attended a management meeting where "somebody in that meeting brought up the point that they might be violating . . . the labor laws of their contract." Mr. Parzick subsequently related that Mr. Kinlin's remarks were as follows:

> A statement was made that maybe we shouldn't be eliminating this group [the negotiation

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adducing evidence concerning the subsequent layoffs of the very same younger employees whom plaintiffs claimed had replaced them following their terminations was an additional and independent reason for granting a new trial, at least as to damages.

> engineers]. Maybe we're doing something illegal or against the contract, and Mr. Nick Kulokoski, who was personnel manager for the division said, "let's give it a try. What do we have to lose?"

Mr. Kinlin testified at the first trial that he did not recall any such conversation with Mr. Parzick, that he did not attend any management meeting of the sort referred to by Mr. Parzick, and that he had no role whatsoever in the decision to eliminate the plaintiffs' job position. (See Petition for Certiorari at A-41)

In granting Westinghouse's motion for a new trial, the district court ruled that it should have excluded the Parzick testimony and that it was "quite possible that unknown declarant's statement [related in the Parzick testimony] affected defendant's substantial rights." (*Id.* at A-35) In particular, the lower court concluded that the Parzick testimony

"probably was irrelevant" evidence because there was nothing which indicated that the illegality being discussed had anything to do with the ADEA. Rather, to the extent the unidentified manager indicated the subject of his concern, it had to do with a potential violation of the collective bargaining agreement and the National Labor Relations Act. (*Id.* at A-33, A-34)

More importantly, the district court was of the opinion that the Parzick testimony, even if deemed to be marginally relevant, was substantially less probative than it was misleading to the jury and prejudicial to Westinghouse and, thus, was inadmissible under the Fed. R. Evid. 403. As the court observed, "The jury was probably left with the impression that defendant's managers were a lawless bunch." (*Id.* at A-34)

Finally, the lower court ruled that, even if the statement was otherwise admissible, testimony concerning the alleged remarks of the unidentified manager should have been accompanied by a cautionary instruction to the jury that the statement could not be taken as evidence that Westinghouse was in fact violating any law, much less the ADEA. (*Id.* at A-35)

At the second trial of this matter, most of the same witnesses appeared and gave the same testimony they had in the first trial. However, the district court refused to allow Mr. Parzick to testify concerning the alleged conversation he had with Mr. Kinlin. Adhering to the ruling it had made in granting Westinghouse's motion for a new trial, the district court again concluded that the probative value, if any, of such testimony was far outweighed by its

potential to prejudice Westinghouse in the eyes of the jury and that, accordingly, it must be excluded under Fed. R. Evid. 403.

On appeal following the second trial, the Third Circuit reviewed the trial court's grant of a new trial, as well as the evidentiary rulings underlying that grant. With respect to the exclusion of the Parzick testimony, the appellate court declared that ". . . a trial judge's decision to admit or exclude evidence under Fed R. Evid. 403 may not be reversed unless it is 'arbitrary and irrational.'" (*Id.* at A-43) (citing *United States v. DePeri,* 778 F.2d 963, 973-74 (3d Cir. 1985), *cert. denied,* 475 U.S. 1110 and 476 U.S. 1159 (1986)) The Third Circuit concluded that no such showing had been made by petitioners in this case.

> The trial court's conclusion that the testimony at issue should

> have been excluded under Fed R. Evid. 403 was unquestionably neither arbitrary nor irrational but reflected an appropriate assessment and weighing of the prescribed considerations. Relevant evidence may be excluded under Rule 403 "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jurors." Here, the trial judge had solid grounds for concluding that the out-of-court statements at issue had little if any relevance or probative value and that they created a substantial danger of "unfair prejudice," "confusion of the issues," and "misleading the jurors."

(*Id.* at A-44)

The Court of Appeals went on to affirm the grant of a new trial based on the district court's recognition of its evidentiary error under Fed. R. Evid. 403. Observing that a new trial was required unless it was "highly probable" that the error did not affect any "substantial rights" (citing to *McQueeny v. Wilmington*

Trust Co., 779 F.2d 916, 928 (3d Cir. 1985)), the Third Circuit ruled:

> No such conclusion was possible in the present case. Indeed, plaintiffs implicitly concede the importance of the out-of-court statements by arguing in this appeal that the exclusion of the same testimony at the second trial caused them "substantial prejudice" (Appellants' Br. 37) and thus constituted reversible error. *See* Fed. R. Civ. P. 61 (judgment may not be set aside based on exclusion of evidence unless necessary to ensure "substantial justice").

(*Id.* at A-48, A-49)

REASONS FOR DENYING THE WRIT

I. SUPREME COURT REVIEW OF THE LOWER COURT'S DISCRETIONARY AND HIGHLY FACT-SPECIFIC RULING UNDER FEDERAL RULE OF EVIDENCE 403 IS NOT WARRANTED.

Petitioners assert that, in affirming the district court, the Third Circuit ignored the dictates of Fed. R. Evid. 402 and ". . . established a contrary rule of relevancy which would exclude all evidence of discriminatory intent other than direct

name calling." (Petition for Certiorari at 12) This assertion cannot withstand even the most cursory reading of the appellate court's decision. The Third Circuit, pointing out that the district court did *not* rule that the Parzick testimony was irrelevant, specifically noted that it was not undertaking a review of a ruling on relevancy under Fed. R. Evid. 402. (*Id.* at A-44) Rather, the Third Circuit limited its consideration to the question of whether the district court abused its discretion when it determined under Fed. R. Evid. 403 that whatever relevance might be attributed to the Parzick testimony was far outweighed by its potential to prejudice and confuse the jury. Far from imposing a "specificity mandate" in relevancy determinations, the Third Circuit expressly

assumed that Mr. Parzick's testimony might have some marginal relevance.

Stripped of its misleading "specificity mandate" label, petitioners' contention is nothing more than an assertion that the district court, and the appellate court in reviewing the decision of the court below, should have struck the Fed. R. Evid. 403 balance in favor of admitting the Parzick testimony. Such a case specific issue is not supported by a "special and important reason" which would justify the grant of a writ of certiorari. Accordingly, this Court should deny the petitioners request for a writ on this issue.

The decision of a district court to exclude or admit evidence under Fed. R. Evid. 403 is an inherently fact-specific determination. The trial judge must

consider the particular testimony or evidence at issue, and "'balanc[e]' [the] probative value on the one hand and [the] 'unfair prejudice' on the other[.]" *United States v. Long*, 574 F.2d 761, 767 (3d Cir. 1978) *cert. denied*, 439 U.S. 985 (1978); *United States v. Washington*, 705 F.2d 489, 498-99 (D.C. Cir. 1983). It is well-established that the probative value of testimony and the prejudice presented by the testimony are "highly subjective factors." *Long*, 574 F.2d at 767; *Rovegno v. Geppert Bros., Inc.*, 677 F.2d 327 (3d Cir. 1982).

It is exactly because a trial court's rulings on the admission or exclusion of evidence are so fact-specific that those rulings are to be reviewed for an abuse of discretion and overturned only where they are clearly contrary to reason. *Carden v.*

Westinghouse Electric Corp., 850 F.2d 996, 1001 (3d Cir. 1988); *United States* v. *Long*, 574 F.2d at 767 ("The trial judge, not the appellate judge, is in the best position to assess the extent of the prejudice caused a party by a piece of evidence."); *Estes* v. *Dick Smith Ford, Inc.*, 856 F.2d 1097, 1102 (8th Cir. 1988) (Cited in Petitioner's Brief at 20). The Third Circuit applied this highly deferential (and well-established) standard of review in affirming the lower court's decision not to admit certain evidence in the specific circumstances of this case. That determination by the Third Circuit did not involve the establishment of legal principles that will impact future cases. As such, the Third Circuit's decision meets none of the criteria which would warrant the grant of certiorari.

In particular, the correctness of the judgment below is only a minor factor considered by the Supreme Court in determining whether to grant a writ of certiorari. As stated by Justice Rehnquist in *Ross v. Moffitt,* 417 U.S. 600, 616-17 (1974), "[t]his Court's review is discretionary and depends on numerous factors other than the perceived correctness of the judgment we are asked to review." Moreover, this Court is less likely to review the lower court's decision when it is based on the application of a highly fact-specific finding, *United States v. Johnston,* 268 U.S. 220, 227 (1925) ("We do not grant a certiorari to review evidence and discuss specific facts."); *Texas v. Mead,* 465 U.S. 1041 (1984), especially when the application of the facts to the law receives the concurrence

of the court of appeals. *Rogers v. Lodge*, 485 U.S. 613, 623 (1982); *Berenyi v. Immigration Director*, 385 U.S. 630, 635 (1967); *Graver Mfg. Co. v. Linde Co.*, 336 U.S. 271, 275 (1949). As observed by the Court in *Graver Mfg. Co.*, "a court of law, such as this Court is, rather than a court for correction of errors in fact finding, cannot undertake to review concurrent findings of fact by two courts below in the absence of a very obvious and exceptional show of error." *Id.* at 275.

II. SUPREME COURT REVIEW OF THE PROPER STANDARD OF HARMLESS ERROR IS NOT WARRANTED IN THIS CASE BECAUSE THE ISSUE WAS NEVER RAISED BELOW.

The petitioners seek to have this Court review the proper standard to be applied by an appellate court when assessing whether the trial court has committed reversible error. Specifically,

the petitioners raise the issue of whether a criminal standard of harmless error, as applied by the Court of Appeals for the Third Circuit, is the proper standard of review in civil cases. The petitioners, however, did not raise this issue in the Third Circuit. Indeed, in their briefs to the Third Circuit both the petitioners and the respondent argued that the criminal standard of harmless error *was* the proper standard of review. Accordingly, this Court should exercise its discretion not to a review question that was not presented to, or passed upon by, the court below.

This Court ordinarily does not decide questions not raised or involved in the lower court. *Delta Airlines v. August,* 450 U.S. 346, 362 (1981); *United States v. Santana,* 427 U.S. 38, 41 n.2 (1976); *Duignan v. United States,* 274 U.S. 195, 200

(1927). For example, in *Delta Airlines* the petition for certiorari presented the issue of a district judge's abuse of discretion in denying the petitioner's costs under Rule 54 of the Federal Rules of Civil Procedure. The Court refused to review this issue. The Court held that the "question [of the district judge's abuse of discretion] was not raised in the Court of Appeals and is not properly before us." *Id.* at 362.

In *Duignan,* the petitioner sought, in part, to have the Court review the constitutionality of the forfeiture of his leasehold under Section 23 of Title II of the National Prohibition Act. The Court found that "[t]he court below in enumerating the questions raised and presented made no mention of the constitutional question." *Id.* at 200. The

Court also found that "[t]he assignment of errors below did not refer specifically to it as required by the rules of that court, and so far as the record discloses it was not presented there." *Id.* In denying certiorari, the Court reasoned that "[i]t is only in exceptional cases coming here from the federal courts that questions not pressed or passed upon below are reviewed." *Id.*

The issue of whether the criminal standard of harmless error is the appropriate standard to judge whether the trial court in this case committed reversible error was not raised below. Indeed, the only mention petitioners made to the Third Circuit concerning this issue was that the criminal standard of harmless error *was* the proper standard of review to apply to their assignments of error:

> More specifically, this Court has held that an evidentiary error is not harmless unless (a) it is more probable than not that the error did not affect the judgment; (b) it is more probable than not that the error did not contribute to the judgment, or that (c) it is almost certain that the error did not taint the judgment. *McQueeny v. Wilmington Trust Co.*, 779 F.2d 916 (3d Cir. 1985), adopting the criminal standard of review originally espoused in *In Government of Virgin Island v. Toto*, 529 F.2d 278 (3d Cir. 1976).

(Brief of Appellants' at 21.) Neither the Third Circuit, nor the district court, was ever asked to decide whether a different standard should be applied. Accordingly, applying the long-standing principle of this Court not to review an issue that was not raised below, this Court should deny the petition for certiorari on this issue.

Even if this issue had been raised in the Court of Appeals, this case is not an appropriate vehicle for reviewing that

issue because: (i) it is not at all apparent that the district court applied the criminal standard of harmless error when it granted a new trial; and (ii) application of an alternative harmless error standard would not have made a difference in the decision reached below.

The criminal standard of harmless error requires that a new trial must be granted unless "it is highly probable that the errors did *not* affect the outcome of the case." *McQueeney v. Wilmington Trust Co.*, 779 F.2d 916, 924 (3d Cir. 1985) (emphasis added). In other words, trial error is presumed to be *harmful* unless demonstrated otherwise. In contrast, in holding that a new trial must be granted, the district court in this case stated that "it is quite possible that [the Parzick testimony] affected defendant's substantial

rights." *Bhaya v. Westinghouse Elec. Corp.*, 709 F. Supp. 600, 603 (E.D. Pa. 1989). Therefore, far from presuming that a harmful error had occurred, as would be the case under the criminal standard of harmless error, the district court appears to have concluded affirmatively that the trial errors affected the jury's verdict. Accordingly, this Court should not grant review on an issue that does not appear to have been a factor in the lower court's decision.

Finally, by seeking review of the lower court's decision to exclude the Parzick testimony, the petitioners implicitly concede the importance of this testimony, as well the probability that an erroneous ruling concerning its admissability would affect the jury's verdict. On appeal to the Third Circuit,

the plaintiffs argued "that the exclusion of [the Parzick testimony] at the second trial caused them 'substantial prejudice' (Appellants' Br. 37) and thus constituted reversible error." *Bhaya v. Westinghouse*, 922 F.2d 184, 189 (3d Cir. 1990). Based in part on the petitioners' concession, the Third Circuit held "it is apparent that the granting of a new trial on liability was justified." *Id.* Similarly, by filing this petition for a writ of certiorari on the basis of the exclusion of the Parzick testimony, the petitioners concede that the admission *vel non* of that testimony impacted a substantial right.

CONCLUSION

Supreme Court review of the lower court's discretionary and highly fact-specific ruling under Federal Rule of Evidence 403 is not warranted. In

addition, Supreme Court review of the proper standard of harmless error is not warranted in this case because the issue was never raised below. Accordingly, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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May 29, 1991

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LIST OF PARENT COMPANIES AND SUBSIDIARIES

Petitioner Westinghouse Electric Corporation has no parent company. The following entities are non-wholly owned subsidiaries of Westinghouse Electric Corporation:

AEG-Beteiligunsgesellschaft MBH
AEG-Westinghouse Transportation Systems, Inc.
CEEC Investments Incorporated
Cemac Westinghouse Pty. Ltd.
Challenger Electrical Equipment Corporation
Computer Aided Training Company, Inc.
Contadores Electricos, C.A. (CONTELCA)
Corporate Environments of Minnesota, Inc.
Electromar Industria Electrica Brasileira, S.A.
Elektrick Techizati Imalti Tesisati, A.S.
Eletromar Nordeste, S.A.
Email Westinghouse Private, Ltd.
Email Westinghouse Properties
Email Westinghouse Pty., Limited
Enwesa Servicos, S.A.
Escorts, Ltd.
ETIC BV Rotterdam
Gamma Metrics
Gaviform, S.A.
Group W. Radio, Inc.
Harbinger EDI Services, Inc.

Horiba Westinghouse, Ltd.
Hyosung Heavy Industries, Ltd.
Inc.
CEEC Holdings Incorporated
Industria Electrica de Mexico, S.A.
Industria IEM, S.A. de C.V.
Industrias Electronica, S.A. (INDELEC)
Infrared Fiber Systems, Inc.
Inova Microelectronics, Inc.
Integrated Communication Systems Inc.
Integrated Sensors, Ltd.
ISCOSA Industries and Maintenance, Ltd.
Jerry Thompson & Associates, Inc.
Mecanica Pesada, S.A.
Metron, Inc.
Mex Control S.A. de C.V.
Micros Systems Inc.
Photocomm, Inc.
Powerex, Inc.
Project Funding Corporation
Reftrans, S.A.
Serratosa & Castells, S.A.
Siam Toracato de Tella, Ltd.
Silectra, S.A. de C.V.
Societe Generale de Travaux Electriques
(SGTE)
Speech-Plus
Texas PFC, Inc.
Theta J Corporation
Turbine Metal Technologies, Inc.
United Western Technologies Corp.
Vektron S.A.
W.S. Industries (India) Ltd.
WB Bottling Operation
Westinghouse-Airship Industries, Inc.
Westinghouse Asia Controls Corporation
(WEASIA)
Westinghouse de Argentina, S.A.
Westinghouse do Brasil S.A. (WESSA)
Westinghouse Electric Australia Holdings

Limited (WEAHL)
Westinghouse Electric Supply Company of Saudi Arabia (WESCOSA)
Westinghouse Electro Metalurgicas C.A. (WEMCA)
Westinghouse Industria Electrica Brasileira S.A.
Westinghouse Motor Company
Westinghouse Plasma Systems International, N.V.
Westinghouse Saudi Arabia Ltd. (WSAL)
WEXICO Systems and Services, Ltd.